

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1193 of 2007

Saraswathi

.. Petitioner

Vs

1. State of Tamil Nadu,
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-600 009.

2. The District Collector and
District Magistrate
Tiruvannamalai District
Tiruvannamalai.

.. Respondents

Petition filed under Article 226 of the Constitution of India for
issue of Writ of Habeas Corpus as stated therein.

Praying to call for the entire records related to petitioner
husband's detention under Tamil Nadu Act 14/1982 vide detention order
dated 29.7.2007 on the file of the Second Respondent herein, made in
proceedings D.O.No.34/2007-C2 quash the same as illegal and consequently
direct the respondents herein to produce the petitioner's husband namely
Govindan before this Hon'ble High Court, and set the petitioner's husband
at liberty from the detention.

For Petitioner : Mr.C.C.Chellappan
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R
(Made by P.D.DINAKARAN, J.)

The petitioner, wife of the detenu Govindan, who was incarcerated by
order dated 29.7.2007 of the second respondent under the provisions of
the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug
Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand
Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14
of 1982) branding him as a Bootlegger, and confined at Central Prison,

Vellore, seeks a writ of Habeas Corpus to call for the records in connection with the said order of detention in D.O.No.34/2007-C2, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

2. On the basis of the complaint given by one Sivanagiri on 23.6.2007 at 16.00 hours, that after he consumed the illicit arrack bought from the detenu, he felt burning sensation in the eyes, throat, stomach and giddiness and vomitted and fell down, a case was registered in Crime No.255/2007 on the file of Thanipadi Police Station, under Sections 4(1)(i) read with 4(1-A)(ii) of the Tamil Nadu Prohibition Act. During the course of investigation, the detenu was arrested and samples of illicit arrack were taken and subsequently, the case was altered into Sections 4(1)(i), 4(1)(aaa) r/w 4(1-A)(ii) of the Tamil Nadu Prohibition Act. The chemical analysis report of the samples taken from the arrack seized from the detenu disclosed that the arrack contained atropine of 6.7 mgms per 100 ml.

3. The second respondent, taking note of the above case as a ground case and finding that there are three adverse cases of similar nature in crime Nos.44/2006, 166/2007 and 330 of 2006 on the file of same police station, having satisfied that there is compelling necessity to detain the detenu in order to forbid him from indulging in such activities prejudicial to the maintenance of public order and public health, ordered his detention dubbing him as a bootlegger.

4. The learned counsel for the petitioner challenges the order of detention on the ground of delay of 32 days in passing the order of detention, from the date of arrest.

5. Admittedly, the detenu was arrested on 23.6.2007 in connection with the ground case. The chemical analysis report was received on 27.6.2007 which disclosed that the sample I.D.arrack contained 6.7 mg/100 ml of atropine, which is dangerous to human life and the statement of the doctor was recorded on 28.6.2007. However, the order of detention was passed only on 29.7.2007. Concededly, there is a delay of 32 days in passing the order of detention.

6. It is settled law that when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the casual connection has been broken in the circumstances of each case. Further, when such delay is unsatisfactory and unexplained, the same would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to prevent him from acting in a prejudicial manner.

7. In the instant case, the delay of 32 days in passing the order of detention has not been explained satisfactorily. Hence, we are of the considered opinion that the said delay vitiates the impugned order of detention. Accordingly, the order of detention is quashed. The habeas corpus petition is allowed. The detenu is directed to be released forthwith, unless he is required in connection with any other case.

sra

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
Prohibition & Excise Department
Secretariat, Chennai 9.
2. The District Collector and
District Magistrate, Tiruvannamalai
District, Tiruvannamalai.
3. The Superintendent
Central Prison, Vellore.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort Saint George, Chennai-9.
5. The Public Prosecutor
High Court, Madras.

SA(CO)
dcp/30.11

सत्यमेव जयते

HCP No.1193 of 2007.

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